



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

HD:hd
Docket No: 01205-99
25 October 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: CDR E [REDACTED] III, SC, US [REDACTED]
REVIEW OF NAVAL RECORD

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Forms 149 dtd 8 Feb and 2 May 99, each w/attachments
(2) PERS-311 memo dtd 7 May 99
(3) Subject's ltr dtd 20 May 99 w/enclosures
(4) PERS-311 memo dtd 13 Aug 99
(5) PERS-85 memo dtd 14 Oct 99
(6) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, in effect, that the applicable naval record be corrected by removing the fitness report for 1 November 1996 to 16 July 1997, a copy of which is at Tab A. He also requested adjustment of his commander date of rank to 1 September 1998. His current date of rank and effective date are 29 April 1999.

2. The Board, consisting of Ms. Hare and Schnittman and Mr. Ensley, reviewed Petitioner's allegations of error and injustice on 19 October 2000, and pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. In correspondence attached as enclosure (2), PERS-311, the Navy Personnel Command (NPC) office having cognizance over fitness report matters, recommended that Petitioner's fitness report record remain unchanged. However, they indicated that if he provided a copy of the investigation in his case for review, they "could make a more accurate determination of his petition."

c. Enclosure (3) is Petitioner's response to the PERS-311 advisory opinion, in which he provided the investigation.

d. In correspondence attached as enclosure (4), PERS-311 commented to the effect that after having reviewed the investigation, they stood by their original opinion at enclosure (2). They stated the investigation does not indicate that the charges against Petitioner were proven invalid or that they were dismissed.

e. In correspondence attached as enclosure (5), PERS-85, the NPC office having cognizance over active duty officer promotions, has commented to the effect that Petitioner's request to adjust his date of rank has merit and warrants favorable action. They recommend changing his date of rank (and by implication, effective date) to 1 September 1998.

CONCLUSION:

Upon review and consideration of all the evidence of record, and especially in light of the contents of enclosure (5), the Board finds the existence of an injustice warranting partial relief, specifically, changing Petitioner's commander date of rank and effective date to 1 September 1998.

The Board substantially concurs with enclosure (4) in finding that the contested fitness report should not be removed.

In view of the above, the Board directs the following limited corrective action:

RECOMMENDATION:

a. That Petitioner's naval record be corrected, where appropriate, to show his date of rank and effective date in the grade of commander as 1 September 1998, rather than 29 April 1999; and that his lineal precedence be adjusted accordingly.

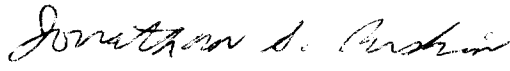
b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.

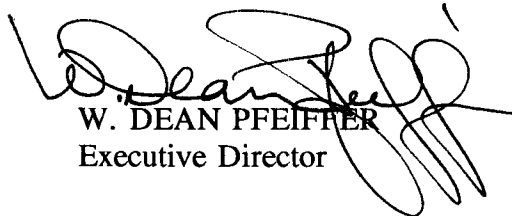
d. That the remainder of Petitioner's application be denied.

4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder


JONATHAN S. RUSKIN
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.


W. DEAN PFEIFFER
Executive Director



DEPARTMENT OF THE NAVY
NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000

1205 49
1610
PERS-311
7 May 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: LCE [REDACTED] R. [REDACTED]

Ref: (a) BUPERSINST 1610.10 EVAL Manual

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 November 1996 to 16 July 1997.

2. Based on our review of the material provided, we find the following:

a. A review of the member's headquarters record revealed the report in question to be on file. The report was signed by the member acknowledging the contents of the report and his right to submit a statement. The member indicated he did not desire to submit a statement. In accordance with reference (a), Annex S, Paragraph S-8, the member has two years from the ending date of the report to submit a statement.

b. Lieutenant Commander [REDACTED] mentioned an on-going DCIS Investigation being conducted during the period of the report and completed on 2 April 1998. The member did not submit a copy of the investigation with his petition. Although Lieutenant Commander [REDACTED] claims the charges against him were proven invalid, he has provided nothing other than his own statement in support of that claim.

c. Lieutenant Commander [REDACTED] claims the performance marks and remarks in the fitness report were predicated on an incident in which the charges against him were dismissed. Although the member indicates the charges were dismissed, the reporting senior may properly comment or assign grades based on performance of duty or events, which occurred during the reporting period. The reporting senior may comment on events the facts of which are established to his/her satisfaction. A fitness report does not have to be consistent with previous or subsequent reports.

d. If [REDACTED] provide a copy of the DCIS Investigation for review, we could make a more accurate determination of his petition.

e. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.



Head, Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

**NAVY PERSONNEL COMMAND
5720 INTEGRITY DRIVE
MILLINGTON TN 38055-0000**

1610
PERS-311
13 August 1999

**MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS**

Via: PERS/BCNR Coordinator (PERS-00XCB)

Subj: CDR [REDACTED], US [REDACTED]

Ref: (a) Pers-311 memo 1610 of 7 May 1999

(b) Defense Logistics Agency (DLA), Criminal Investigations Activity (DCIS) report dated
2 April 1998

Encl: (1) BCNR File

1. Enclosure (1) is returned. The member requests the removal of his fitness report for the period 1 November 1996 to 16 July 1997.

2. Based on our review of the material provided, we find the following:

a. Reference (a) is our previous recommendation regarding the member's request. The member's request for reconsideration is based on reference (b). The investigation does not indicate the charges against the member were proven invalid or that the charges were dismissed.

b. In view of the above, the comments and recommendation contained in reference (a) remain appropriate. The member does not prove the report to be unjust or in error.

3. We recommend the member's record remain unchanged.

[REDACTED]
[REDACTED]
[REDACTED]
Head/Performance
Evaluation Branch



DEPARTMENT OF THE NAVY

NAVY PERSONNEL COMMAND

5720 INTEGRITY DRIVE

MILLINGTON TN 38055-0000

5420

Ser 85/225

14 Oct 99

MEMORANDUM FOR BCNR

Via: BUPERS/BCNR Coordinator

Subj: CDR [REDACTED] SC, USN [REDACTED]

Encl: (1) BCNR File

1. Enclosure (1) is returned, recommending approval of CDR [REDACTED] request to backdate his date of rank to 1 September 1998.
2. CDR [REDACTED] was selected by the FY-98 Active Commander Staff Promotion Selection Board. Due to a delay in processing adverse information on selectee, approval of his promotion was delayed. The subject promotion was approved after CDR [REDACTED] projected promotion date of 1 September 1998. CDR [REDACTED] current date of rank is 29 April 1999.
3. Recommend his date of rank be backdated to 1 September 1998.

[REDACTED]
BCNR Liaison, Officer Promotions
and Enlisted Advancements Division